

**QUESTION 1**  
**(One hour)**

Ace, suspected leader of a group of illegal drug dealers, is accused of the felony of possessing illicit drugs for the purpose of sale.

At a motion *in limine hearing* held before trial regarding the admissibility of expert testimony, prosecutor Pete called Officer Ollie as an expert. Ollie testified that he'd been a policeman for twenty years and had been trained by other officers about illegal drugs. Ollie had worked in the narcotics task force (NTF) for five years, had talked to drug users and traffickers, principally Louis. Louis, who was in handcuffs when Ollie talked to him after having been arrested for the same crime as Ace, told Ollie that he knew all about drugs, and would turn state's evidence that Ace was guilty if Ollie would release him from custody. After talking to him about Ace, Ollie released Louis, telling him that whatever charges Louis would face would depend on the outcome of Ace's trial. Ollie's expert opinions were: Louis was a reliable witness who told the truth, the drugs were possessed for sale and Ace was guilty as charged. Ace objected to all of Ollie's testimony.

At the same motion *in limine hearing*, Ace called Dr. Ed, who had earned a Ph.D. in sociology and whose dissertation was titled "Police Drug Experts or Drug Dealers: Who Do You Trust?". Ed was an adjunct professor who made most of his income testifying as a defense expert in drug cases. Ed had studied Ollie's department and concluded that NTF's methods were based on unreliable information and speculation. Pete objected to all of Ed's testimony.

At trial, Ace called Wilma, Louis' wife, who had agreed to testify. She offered to state that after his arrest, Louis told her that he was the "big man in waiting" in the local drug culture, and had "set up" his rival Ace for a fall. During the same conversation, Louis told her, "If anyone asks, tell them I've told you nothing about drugs." Louis took the Fifth and didn't testify, but objected to Wilma's being called, testifying, and specifically to anything said between Wilma and Louis.

Finally, Ace called Walt, who had been Louis's next door neighbor for ten years, to testify that Louis was a habitual drug user, grew marijuana, and offered to share cocaine with Walt. Further, when Walt refused the cocaine, Louis had hit Walt over the head with a lawn chair causing lacerations and bruising.

As advocates for each party, make and respond to all objections and claims of privilege presented by the question. As the trial judge, briefly discuss the reasons for and against the admission of the evidence, the rulings you would make and whether you would permit either or both experts to testify in front of the jury. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law. Any privilege should be discussed based on California law. Police experts routinely testify in drug cases.

**QUESTION 2**  
**(One hour)**

Ace, Dick and Harry played hooky from junior high school and walked to their favorite nearby swimming hole in the River. Once there, they met fellow students Thelma and Louise. Several of the group drank beer for several hours before all went swimming. Ace drowned. Ace's parents Tom and Jane, sued the State of California for wrongful death. The parents hired attorney Sally. After speaking with the boys and parents, Sally interviewed Ace's pediatrician Dr. Dan and both girls on tape. Dan and all of the children refused to be interviewed by State's investigator.

When the trial started, Sally disclosed that she would call Dan and Louise as witnesses and supplied a partial summary of both interviews, but refused to surrender the tapes, citing attorney-client and work product privileges, and the right of privacy.

At trial, Sally called Louise, who testified that she thought Ace was a strong swimmer and looked sober when he went in. Just before he drowned however, Ace called out that the river's current was too strong. On cross examination, State asked whether just before he went in Louise told Ace that he looked to be in no shape to go swimming, and since the incident she had told anyone that Ace had always been a wimp swimmer. When State attempted to ask Louise about any conversations that she'd had with Sally in preparing for her testimony, Sally objected, again citing work product and attorney-client privileges. State finally asked Louise whether she had a crush on Ace in school.

Sally also called Dr. Dan, who opined that Ace was a normal kid who had never complained about not being able to swim, and had no physical impairments that would prevent him from being a competent swimmer. When State attempted to ask Dan on cross examination whether Sally had threatened to put him out of business if he didn't testify for her, Sally objected, again citing the same privileges.

Finally, Sally called Jane and asked her about Ace's behavior before his death. Jane testified that he was wonderful as was the entire family. State then asked her on cross whether Tom had been convicted of drunk driving within the past year and was enrolled in an Alcoholics Anonymous program.

As advocates for each party, make and respond to all objections and claims of privilege presented by the question. As the judge presiding over both the discovery hearing and the trial, discuss the rulings you would make on all issues and any limitations to admissibility at each proceeding. Answer according to the general principles we've discussed in class, and point out any significant differences between California and federal law. Any privilege should be discussed based on California law. This is an evidence test, so don't write about procedure law.